CF 1001

(4)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT

BILASPUR

W. P. NO. 387 / 2004

Petitioner : M/s Mangilal Pagaria, Builders and Contractors. A Firm registered under Indian Partnership Act, Represented through Susheel Chandra Pagaria, Partner, Pagaria House, Near Bus Stand, Jeewan Beema Marg, Pandri, Raipur-(C.G.)

P. R. No. 3103/07 Shri Abhishek Sharma
Presented by Shri
dated 24.1.07

Versus

Respondents :1. State of Chhattisgarh, Through The Secretary Nagaria Prashashan Avam Paryawaran, D.K.S. Bhawan, Mantralaya Raipur, Dist : Raipur-(C.G.)

2. The Collector, Raipur, Dist : Raipur-(C.G.).

3. The Commissioner, Municipal Corporation, Raipur, Dist : Raipur-(C.G.)

4. The Joint Director, Town & Country Planning, RDA Building, Sharda Chowk, Raipur-(C.G.)

WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF MANDAMUS / CERTIORARI AND / OR FOR ORDERS IN NATURE OF WRITS.

(162)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 3089/04 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

28-2-2005

Shri Kishore Bhaduri, counsel for the petitioner.

Shri Sanjay S. Agrawal, Govt. Advocate for respondents No.1, 2 and 4.

Shri H. B. Agrawal, Sr. Advocate with Ms. Sangeeta Mishra, Advocate for respondent No.3.

Additional return along with the site plan showing the existing position of the constructed building has been filed on behalf of respondent No.3 to which learned counsel for the petitioner does not want to file any reply.

I have heard learned counsel for the parties.

By this writ petition filed under Article 226/227 of the Constitution of India the petitioner has prayed that respondents be directed not to demolish the building constructed by the petitioner for the proposed bus stand.

The case of the petitioner is that the petitioner constructed the building as per the site plan approved by respondents No.3 and 4 whereas, reply of respondent No.3 is that the petitioner has constructed the building in utter violation of the approved plan.

Learned counsel for respondents submits that the plan submitted by the petitioner was approved for construction of 3 blocks whereas, on site, the petitioner has constructed 9 blocks. The

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

petitioner has constructed excess building ad measuring 2199.97 sq. ft. on each flour and even the road which was to be kept 18 meter wide has also been narrowed on account of excess construction on the blocks and as per the site, excess construction was also found on block Nos.4, 5 and 7. Terminal building which was to be constructed for the passengers has not been constructed as per the approved plan and the same has been constructed in a less area than the approved plan.

Whereas, learned counsel for the petitioner submits that all the construction has been made in accordance with the approved plan.

In view of the above facts, disputed questions of fact are involved in this writ petition, which cannot be gone into by this Court in the writ jurisdiction. The proper remedy for the petitioner is to move the civil Court, if so advised.

At this stage, learned counsel for the petitioner submits that a protective order may be given in favour of the petitioner for some time in order to enable him to file civil suit before the civil Court.

On the other hand, Mr. Agrawal, learned Senior Advocate submits that the petitioner is creating third party interest by transferring the constructed building and in some cases he has already transferred and he has agreed to transfer other buildings also which may create further complications in the matter, therefore,

GRPRJ—FS/350—12/2000—50,000.

(165)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
Barve	if any protective order is given in favour of the petitioner, then the petitioner may also be restrained from creating any third party interest till the application is decided by the trial Court. In the result, the writ petition is dismissed as the same involves disputed question of facts. However, the petitioner, if so advised, can approach the civil Court for appropriate remedy and three weeks' time is allowed to move the civil Court. Till then, both the parties are directed to maintain status quo as exists today. Certified copy as per Rules. **Sd/-** **L.C. Bhadoo** **Judge**	